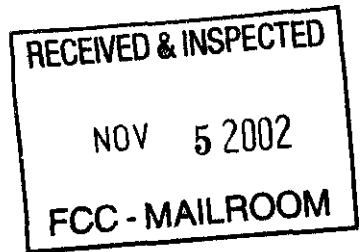


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Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

In the Matter of ) MB Docket No. 02-248  
Amendment of Section 73.202(b) ) RM-10537  
Table of Allotments )  
FM Broadcast Stations )  
Smiley, Texas )

To: Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau

**REPLY COMMENTS**

On October 21, 2002, New Ulm Broadcasting Company (hereinafter "New Ulm"), licensee of radio station KNRG(FM) in New Ulm, Texas, filed its Comments and Counterproposal in this proceeding. In addition, Comments were also filed by Linda Crawford, Petitioner for Smiley in RM-10537, ("Crawford") a Counterproposal was filed by LBR Enterprises ("LBR"); and Comments in the form of an expression of interest in the Smiley allocation were filed by Smiley Broadcast Interest ("SBI"). The following comments will be directed at those filings.

I. The Crawford Comments were directed almost exclusively to a description of Ms. Crawford and her associates and their overall plan to create a network of small stations throughout a regional area which would include the State of Texas, including, it appears, the requested allocation to Smiley, Texas. To the extent that Crawford's Comments are self-explanatory and do not include any factual references to Smiley or any further arguments as to why Smiley should be allocated a new FM channel, there is

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nothing further found relevant to the Commission's determination of this proceeding and no further comment is necessary or required here.

**II. The Comments of Smiley Broadcast Interest** consist solely of that entity's expression of interest in constructing a station in Smiley if one is allotted there, and no further comment is necessary.

**111. LBR Enterprises filed a Counterproposal** which proposed a change in channel (from **223A** to **280A**) and transmitter site for KYKM in Yoakum, Texas, in order to facilitate the upgrade and change in transmitter location of its own station KZRC in Markham, Texas. **As** part of its proposal, LBR agreed to pay for the costs incurred by KYKM in such a move and channel change. **As** New Ulm is also already committed in its own proposal to reimburse those licensees proposed to change channels necessary to implement the New Ulm proposal, including the licensee of KYKM for the change proposed at that station, 1/ there is the unusual situation here of two separate, but consistent, proposals, both suggesting the same change of channel and site relocation for the same station and agreeing to reimburse the station for expenses

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1/ It has been noted that the consent form for Yoakum included in New Ulm's Attachment 3 erroneously indicates, in an editorial error, a change in channel "at its present authorized site". The Consent did agree to the proposal 'as being filed by New Ulm in its counterproposal', the facts of which were fully known and agreeable to the licensee of KYKM, and the counterproposal correctly described the channel and site change at Yoakum. A corrected consent form recognizing and agreeing to the change in site necessary for Yoakum is attached hereto.

incurred in that change. Upon adoption of the New Ulm proposal, New Ulm will fully honor its present commitment to fully reimburse all those licensees, including the licensee of KYKM, for costs associated with the channel changes as proposed by New Ulm. At the same time, we recognize the unusual circumstance here that LBR has also proposed to fully reimburse the licensee of KYKM <sup>2/</sup> in its Petition and we therefore request that in the event that both proposals are adopted in this proceeding, that the Commission provide in that case that New Ulm and LBR would split the reimbursement cost to KYKM. If the LBR Petition is not granted, or if for any reason the Commission is not disposed to agree to split the reimbursement to KYKM, then New Ulm would stand by its own commitment to reimburse all licensees in full, including the licensee of KYKM. Aside from the matters discussed here, New Ulm has no objection to adoption of the LBR proposal.

IV. The filing of a n ———'cation by Elgin FM Limited Partnership for modification of KKLB(FM), Elgin, Texas. The New Ulm Proposal was filed with the Commission on Monday, October 21, and was at that time, to the best of New Ulm's knowledge, in full compliance in all respects with all FM spacing rules. It has since been learned that one business day earlier than the New Ulm filing, on Friday, October 18, 2002, an application had been filed by Elgin FM for a minor change at KKLB which included a

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<sup>2/</sup> Although LBR listed Fort Bend Broadcasting as the licensee of KYKM, the licensee is actually LaGrange Broadcasting Corporation (FCC Public Notice 44711, April 12, 2000, confirming assignment to LaGrange).

change in transmitter site that would be slightly short-spaced to New Ulm's reference site for channel 222C3 in Schulenburg. Three days subsequent to the New Ulm filing, the FCC released a Public Notice (No. 25347) revealing the existence of the filing by Elgin. As the Elgin application was filed one business day prior to the filing of the New Ulm proposal, there was no way that New Ulm could have been aware of the filing or the conflict in site spacing.

In any event, as indicated in the attached Engineering Report, there is no difficulty for New Ulm to accommodate the proposed change in site at Elgin, so that there is no conflict between the Elgin application and the New Ulm proposal, and it is requested that the Commission recognize this slight amended modification in reference site for channel 222C3 in Schulenburg as more fully described in the attached Engineering Report. In this regard it is noted that the Elgin application could not have been anticipated, that the slight change in reference point for the proposed Schulenburg allocation does not change the overall new Ulm proposal in any recognizable way, or to the prejudice of any party. Finally, it is again noted that the New Ulm proposal has enormous and unmistakable public interest benefits in its bringing a new service to a town of almost 3,000 persons, along with a significant part of its contiguous outlying area that is presently all "white area", not only without its own transmission service but also without any recognizable reception service of any kind. Bringing a new service to such an area has been described by the Commission as "a special factor involving

significant public interest benefits" of such importance as to override other procedural policies normally employed by the Commission. Columbus, Nebraska, et al, 59RR 2d 1184 @ 1185 (para.5), 1986. Bringing such a new service to a totally unserved area such as the town of Schulenburg, Texas, is precisely what New Ulm has proposed, and adoption of the New Ulm proposal would clearly result in such substantial and significant public interest benefits.

## **V. Conclusion**

It is therefore respectfully submitted that adoption of the New Ulm proposal would clearly be preferable to adoption of the original Linda Crawford proposal for Smiley, would result in a significant and unmistakable service of the public interest, and that it should therefore be adopted.

Respectfully submitted,

NEW ULM BROADCASTING COMPANY

by

  
Robert J. Buenzle

Its Counsel

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November 5, 2002

November 1, 2002

The Federal Communications Commission  
Washington, D.C.

**Re: Consent to Channel Change in MB Docket 02-248**

This is to confirm that LaGrange Broadcasting Corporation, licensee of Radio Station KYKM(FM), Yoakum, Texas, hereby agrees and consents to the modification of its license for that facility as being proposed by New Ulm Broadcasting in its Counterproposal being filed in the above-captioned docket to specify a change of channel for KYKM from its present channel 223A to a new channel 280A at a new transmitter site, and requests that the license for KYKM be modified accordingly. LaGrange Broadcasting Corporation further confirms its present intention and commitment that upon FCC approval of the new allotment, it will promptly file its application for use of the modified channel and upon authorization will diligently construct and operate the station on its new channel, and proceed to take any and all other actions necessary to implement such changes. I verify that this statement is true and correct to the best of my knowledge and is submitted in good faith.

**LAGRANGE BROADCASTING CORPORATION**

By: 

Roy E. Henderson, President

New Ulm Broadcasting  
1110 West William Cannon Drive  
Austin, TX 78745

Comments and Counterproposal  
Amended Schulenburg Site Coordinates  
MM Docket 02-248

### ENGINEERING STATEMENT

This firm has been retained by New Ulm Broadcasting, ("NUB"), Licensee of Radio Station KNRG(FM), New Ulm, Texas to prepare this engineering statement to amend the reference coordinates for the proposed assignment of FM Channel 222C3 at Schulenburg, Texas. NUB filed a counterproposal in the above captioned proceeding seeking the assignment of FM Channel 222C3 to Schulenburg, Texas as a first local service and to provide service to a substantial area that presently has no reception services, including Schulenburg, Texas.

The NUB Comments and Counterproposal was filed in this proceeding on October 21, 2002, and on October 24, 2002 the Commission, by Public Notice in Report No. 25347 announced the filing of a minor change application by Elgin FM Limited Partnership, licensee of Radio Station KKLK(FM), Elgin, Texas, (FCC File No. BPH-20021018AAX). This minor change application of Elgin FM Limited Partnership, first published by the Commission 3 days after the filing of the Schulenburg proposal, is slightly short spaced to the allotment reference coordinates requested for the assignment of FM Channel 222C3 at Schulenburg, Texas in MM Docket 02-248.

In an attempt to resolve the apparent conflict, NUB has revisited its proposal and is requesting a slight change in reference coordinates for the proposed first local service at Schulenburg, Texas. These amended reference coordinates place the allotment site slightly south of the original reference coordinates and at the amended reference site for FM Channel 222C3 at Schulenburg, Texas the proposal is fully compliant with the Commission's allotment criteria. No other changes are being requested in the originally filed proposal except the slight adjustment in the allotment reference coordinates for FM Channel 222C3 at Schulenburg, Texas.

FM Channel 222C3 can be assigned to Schulenburg, Texas at amended site coordinates N29-35-48, W96-49-12. This allotments site is 12.5 km from Schulenburg, Texas, (USAtlas Coordinates N29-40-54, W96-54-10), and a transmitter operating from this site with full facilities for a Class C3 station fully complies with the Commission's city grade illumination requirements. Attached as Exhibit E I, (amended), is an FM Channel Study which demonstrates that the proposed change in allotment coordinates fully complies with the Commission's minimum mileage separation requirements if the other changes proposed by NUB were adopted as proposed.

The foregoing statements are true and correct to the best of my knowledge. My qualifications are a matter of record with the Commission.

Respectfully,



November 3, 2002

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**Comments and Counterproposal**  
Amended Schulenburg Site Coordinates  
MM Docket 02-248

FM Channel 222C3  
Schulenburg, Texas

N29-35-48 W96-49-12

Exhibit E-I

Callsign	State	City	Channel	Class	Status	Dist./km	Sep	Clr
KNRG	TX	NEW ULM	222	ALIC		29.09	142	-112.91
KQVT	TX	VICTORIA	222	ALIC		101.5	142	-40.5
KQVT	<b>TX</b>	VICTORIA	222	ACP		101.47	142	-40.53
KYKM	Tx	YOAKUM	223	ALIC		52.01	89	-36.99
KRTS	<b>TX</b>	SEABROOK	221	<b>C1</b> LIC		144.23	144	0.23
KKLB	TX	ELGIN	223	ALIC		88.94	89	-0.06
KRTS	TX	SEABROOK	221	<b>C1</b> CP MOD		144.23	144	0.23
KMBV	TX	NAVASOTA	223	AUSE		105.1	89	16.1
KZRC	<b>TX</b>	MARKHAM	223	ACP MOD		108.77	89	19.77
KZRC	TX	MARKHAM	223	ALIC		108.77	89	19.77
KMBV	<b>TX</b>	NAVASOTA	223	ALIC		108.05	89	19.05
KMBV	TX	NAVASOTA	223	ACP		109.81	89	20.61
None*	Tx	GONZALES	220	AAPP		66.19	42	24.19
KTSR	Tx	COLLEGE STATION	221	ALIC		115.29	89	26.29

All Distances in Kilometers

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 5th day of November, 2002, upon the following:

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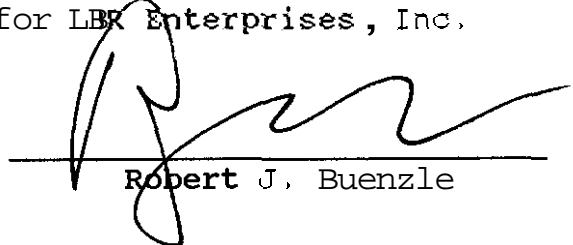
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